In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1283

GLEN ANDREW VIRDEN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of Texas, petitioner was convicted on two counts of violating 15 U.S.C. 902(e), (f) and 905(a), which prohibit the interstate shipment and receipt of firearms by an individual who has been convicted of a crime punishable by imprisonment for a term exceeding one year.[1]

[1] The statutes underlying petitioner's offense have been repealed by Section 906 of Title IV of the Omnibus Crime

He was sentenced to imprisonment for thirteen months. The court of appeals affirmed (Pet. App.).

The evidence at trial showed that, on January 22, 1968, a Norwegian Colt .45 pistol was pawned at the International Arms and Pawn Shop (International) in Phoenix, Arizona. The business records of International and the testimony of the employee who completed the transaction show that the person depositing the weapon signed as Glen Virden (App. 14-25).[1] A request for redemption of the pistol was mailed to International (App. 31). On February 13, 1968, the weapon was sent to Houston, Texas via Railway Express Company (App. 33-37). The consignee was notified and, on March 1, 1968, a person identifying himself as Glen Virden received the package at the Houston Railway Express Office (App. 43-50). A handwriting expert testified that the signatures on the business records of International were the same as on a document which was known to have been signed by petitioner (App. 76-79, 83-84).

Agent Whatley, a special investigator with the Alcohol, Tobacco and Firearms Division of the U.S. Treasury Department, also testified that petitioner had made incriminatory admissions regarding his knowledge of the weapon during an interview. The agent testified that he warned petitioner of his con-

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Control and Safe Streets Act of 1968, 82 Stat. 234. Crimes of the nature involved in the present case are now dealt with in 18 U.S.C. 922-924. The prosecution survives by virtue of 1 U.S.C. 109.

[1] We are lodging with the Clerk a copy of Appellant's Appendix (App.) of the Record on Appeal.

stitutional rights prior to any questioning. Thereafter petitioner agreed to talk and made incriminatory admissions (App. 86-89, 113-121).[1]

Petitioner contends that the statute under which he was convicted is unconstitutional. He asserts that his Fifth, Eighth, Ninth, Tenth Thirteenth, Fourteenth, and Fifteenth Amendment rights have been violated. Many of his claims, such as the argument that he is being subjected to involuntary servitude (Pet. 4) are frivolous. Others, such as the assertion that there is no rational basis for punishing persons, convicted of non-violent crimes, for transporting firearms in interstate commerce (Pet. 16), have been soundly and consistently rejected. *E.g.*, *Williams* v. *United States*, 426 F. 2d 253 (C.A. 9), certiorari denied October 26, 1970 (No. 5552, this Term); *United States* v. *Thoresen*, 428 F. 2d 654 (C.A. 9); *United States* v. *DePugh*, 266 F. Supp. 453 (W.D. Mo.), affirmed 393 F. 2d 367 (C.A. 8), certiorari denied, 393 U.S. 832; *Reddy* v. *United States*, 403 F.2d 26 (C.A. 1), certiorari denied, 393 U.S. 1085; see also *United States* v. *Symes* (C.A. 8), No. 20,438, decided February 1, 1971.

Petitioner also alleges, without elaboration, that the evidence was insufficient and that his statements to Agent Whatley should have been suppressed. These

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[1] It was stipulated at trial that petitioner previously had been convicted in Texas of a felony and sentenced to imprisonment for one year (App. 12-13).

contentions are, in light of the evidence summarized above, clearly insubstantial.[4]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1971.

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[4] Petitioner's objection (Pet. 6) to the introduction of Government Exhibit II, his arrest sheet on another offense, is similarly baseless. The exhibit was admitted only as to the signature thereon (App. 71-72), which was one of those used by the handwriting expert in making his identification (App. 78-84).

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